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August 20, 2020

Barabara Richardson
Nevada Commissioner of Insurance
1818 East College Parkway Suite 103
Carson City, Nevada 89706

Dear Commissioner Richardson:

I write on behalf of the Consumer Data Industry Association ("CDIA")[1] to express concern with proposed LCB File No. R087-20 recently issued by the Offices of the Insurance Commissioner ("Commissioner"). Section 1 of the proposed regulation, while well-intentioned to attempt to serve consumers impacted by COVID-19, could hurt the very consumers the proposal is trying to protect by eliminating predictive, reliable information. There are also several legal and operational problems with the proposed regulation, which are outlined below. We appreciate the critical need to help consumers through the COVID-19 crisis, but the present proposal will not likely have the results the Commissioner seeks. We would welcome a chance to meet with the Commissioner to find places of agreement that will maintain a safe, sound insurance risk management process, balanced with the needs of consumers to be protected in this unprecedented time.

Before turning to the problems created for consumers by the proposed regulation, some background will help the Commissioner.

1. The credit reporting industry and our response to the pandemic

COVID-19 is a public health crisis that has turned in to an economic crisis. As a result of the pandemic, many consumers have fallen into financial difficulty. Consumer reporting agencies ("CRAs") are doing their part to help minimize the impact of the pandemic on consumers' credit histories. To better understand available consumer credit assistance for their credit during the COVID-19 crisis, there are several basic points to keep in mind:

- Lenders and creditors are strongly encouraged to offer accommodations with consumers, like forbearance programs, deferred payment plans, and payment holidays.[2] These

[1] The Consumer Data Industry Association is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

[2] On March 9, 2020, five federal financial institution regulators and the state financial regulators association reminded financial institutions of the need to meet the financial needs of customers and members affected by the coronavirus. Press Release, *Agencies encourage financial institutions to meet financial needs of*

accommodations can help consumers through financial distress for financial hardships, including those caused by natural and declared disasters.

- Consumer reporting agencies use a data reporting format (Metro 2®) that guides lenders and creditors to report payment accommodations to credit bureaus for consumers who are in financial distress (forbearance plans or deferred payment plans), or who are subject to natural or declared disasters.
- These Metro 2® reporting codes have been in place since before the terrorist attacks of September 11, 2001, and have helped consumers in numerous national disasters, such as hurricanes, floods, fires and tornadoes, and now, the COVID-19 pandemic.
- The leading third-party score models produced by VantageScore and FICO, and other third-party CBIS, are designed to minimize the negative impact of payment accommodations reported to CRAs by lenders. However, aside from these accommodations, there may be other factors that negatively impact a consumer's score, such as the ratio of loan balance to credit limit.

2. Federal law and the pandemic

Congress created a national resolution to a national crisis. In response to the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act on March 27, 2020.[3] The CARES Act delivered an important win for consumers seeking help to protect their credit during and following the pandemic. The law allows consumers, who would otherwise be reported as late, to be reported as current. This consumer benefit applies to Nevada insurance consumers and obviates the need for the proposed regulation.

The CARES Act (Sec. 4021) amends the federal Fair Credit Reporting Act ("FCRA").[4] Under the FCRA, as amended by the CARES Act, when a lender or creditor that furnishes information to a CRA, and that furnisher has placed a consumer into account forbearance plan or agrees to modified payments, that furnisher must report that obligation or account as "current," or as the status reported prior to the accommodation during the period of accommodation, unless the consumer becomes current. This applies only to accounts for which the consumer has fulfilled requirements pursuant to the forbearance or modified payment agreement. Reporting a consumer as current will be helpful to consumers to minimize credit score impacts.

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customers and members affected by coronavirus. These six institutions issuing the notice are the Board of Governors of the Federal Reserve System ("Federal Reserve"), Consumer Financial Protection Bureau ("CFPB"), Federal Deposit Insurance Corporation ("FDIC"), National Credit Union Administration ("NCUA"), Office of the Comptroller of the Currency ("OCC"), and Conference of State Bank Supervisors ("CSBS"), which includes the Nevada Financial Institutions Division. For example, "in the event of a major disaster or emergency, the Federal Reserve encourages banking organizations to work with affected borrowers and other customers," which can include "[o]ffering payment accommodations, such as allowing loan customers to defer or skip some payments or extending the payment due dates, which would avoid delinquencies and negative credit bureau reporting caused by disaster-related disruptions. Fed. Reserve *SR 13-6/CA 13-3: Supervisory Practices Regarding Banking Organizations and their Borrowers and Other Customers Affected by a Major Disaster or Emergency*, https://www.federalreserve.gov/supervisionreg/srletters/sr1306.htm (March 29, 2913).

[3] Pub. L. 116-136.

[4] 15 U.S.C. § 1681 *et seq.*

3. The Proposed Regulation

Section 1 of the regulation says that an "insurer that uses information from a consumer credit report shall not increase a policy holder's or insured's premium or engage in an adverse underwriting decision, as that term is defined in NAC 679B.565, based on a change or multiple changes in consumer credit information or a credit-based insurance score occurring after March 1, 2020, and until two years after the cessastion of the Declaration of Emergency for COVID-19…"

4. Concern with the Proposed Regulation

A. By removing a reliable predictor of risk, the proposed regulation makes it harder for insurers to assess risk, which could increase the cost of insurance for all consumers

Credit reports are reliable and predictive of credit risk[5] and, when used as a factor for insurance decisions, credit information is a racially neutral,[6] predictive indicator of insurance risk.[7] By removing the consideration of accurate, adverse information, the Commissioner is removing one important indicator of risk. The removal of this risk indicator may mean that many more consumers in Nevada are at risk of having their insurance rates rise.[8]

B. The proposal assumes that every change to a consumer's credit information or credit-based score is due to COVID-19.

The proposed regulation would prevent property and casualty insurers from using a change in a consumer's credit score to assess the risk associated with the policy for 2 years by maintaining the insurance policy premium. The result of the proposed regulation could lead to higher insurance costs for all Nevada consumers, because this greatly reduces an insurer's ability to price risk.

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[5] "Available evidence indicates that the information that credit-reporting agencies maintain on the credit-related experiences of consumers, and the credit history scoring models derived from these experiences, have substantially improved the overall quality of credit decisions and have reduced the costs of such decision-making." *Credit Reporting Accuracy and Access to Credit, Federal Reserve Bulletin, Summer 2004, 320; See also, An Overview of Consumer Data and Consumer Reporting, Federal Reserve Bulletin, Feb. 2003, 70 (citations omitted).*

[6] *See, e.g.,* Fed. Trade Comm., *Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance*, 2007.

[7] *See, e.g.,* Morris, Darcy Steeg, Daniel Schwarcz, Joshua C. Teitelbaum, *Do Credit-Based Insurance Scores Proxy for Income in Proxy for Income in Predicting Auto Claim Risk?*, Georgetown Univ. Law Ctr., April 25, 2017.

[8] "[C]redit information saves consumers anywhere from 30 percent to 59 percent on their car insurance (with some carriers providing up to 80 percent of their policyholders with a discount)," *Insurance scoring saves consumers money*, Am. Property Casualty Ins. Assn., 2019, http://www.pciaa.net/docs/default-source/default-document-library/insurance_scoring_overview.pdf?sfvrsn=2 (citations omitted).

C. The two year time-period seems arbitrary and unrelated to any standard

Since the two year time period noted in the proposed regulation does not seem connected to any legal, financial, or operational standard, some greater clarity is in order as to how and why that time-period was selected, as opposed to, for example, the 120-day period noted in the CARES Act.[9]

5. An alternative approach

Rather than create a new regulation with significant legal and operational challenges, the Commissioner should look towards rules that have been well-established for consumer protection. CDIA encourages the Commissioner to consider the Extraordinary Life Circumstances contained in § 6 of the Model Act Regarding Use of Credit Information in Personal Insurance ("Model Act"), or other changes proposed by insurers. The Model Act was promulgated by National Conference of Insurance Legislators ("NCOIL"), first in November 2002, readopted in November 2005, amended in July 2009, and readopted again in November 2015. The Extraordinary Life Circumstances were put forward during prior national financial hardship and they are well-suited for the crisis today. Under the Extraordinary Life Circumstances of the Model Act,

> ...[A] insurer that uses credit information shall, on written request from an applicant for insurance coverage or an insured, provide reasonable exceptions to the insurer's rates, rating classifications, company or tier placement, or underwriting rules or guidelines for a consumer who has experienced and whose credit information has been directly influenced by any of the following events:
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> 1. Catastrophic event, as declared by the federal or state government
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> 2. Serious illness or injury, or serious illness or injury to an immediate family member
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> 6. Temporary loss of employment for a period of 3 months or more, if it results from involuntary termination
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> ...
>
> 8. Other events, as determined by the insurer

Model Act § 6.A.[10]

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[9] The relevant credit reporting provisions of the CARES Act creates a "covered period" and defines it to mean "...120 days after the date of enactment of this subparagraph[,] or "...120 days after the date on which the national emergency concerning [the COVID–19] outbreak declared by the President on March 13, 2020 under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates." 15 U.S.C. 1681s–2(a)(1)(F)(i)(II).
[10] NCOIL Model Act.

6. Conclusion

We appreciate the critical need to help consumers through the public health crisis, that has turned in to a financial crisis, but this proposed regulation, while well-intentioned to attempt to serve consumers, could hurt the very consumers the proposal is trying to protect by eliminating predictive, reliable information. There are several legal and operational problems with this regulation that have been outlined in this comment. We would welcome a chance to meet with the Commissioner to find places of agreement that will maintain a safe, sound insurance risk management process, balanced with the needs of consumers to be protected in this unprecedented time.

Sincerely,

Sarah M. Ohs
Director of Government Relations